

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

RODNEY L. ALLS,)
Petitioner,)
) Civil Action No. 7:14cv00316
v.)
)
COMMONWEALTH OF VIRGINIA,)
Respondent.) **MEMORANDUM OPINION**
) By: Michael F. Urbanski
) United States District Judge

Petitioner Rodney L. Alls, a Virginia inmate proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction in the Rockbridge County Circuit Court. The court finds that Alls did not exhaust his state court remedies before filing this federal habeas petition and, therefore, will dismiss this action without prejudice.

I.

On June 11, 2013, the Rockbridge County Circuit Court convicted Alls of driving after being declared a habitual offender, in violation of Virginia Code § 46.2-357(B). The court sentenced Alls to 4 years incarceration, with 1 year and eight months suspended. According to his petition and confirmed by online state court records, Alls has not yet appealed or filed a petition for writ of habeas corpus concerning this conviction in any state court.

II.

A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. Preiser v. Rodriguez, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court must dismiss the petition. Slayton v. Smith, 404 U.S. 53 (1971). In Virginia, a non-death row felon ultimately must present his claims to the Supreme Court of Virginia and receive a ruling from that court, before a federal district court may consider his claims. See Va. Code § 8.01-

654. In this case, it is clear that Alls has yet to pursue his instant claims in the Supreme Court of Virginia. Accordingly, the court finds that Alls' petition is unexhausted.

III.

Based on the foregoing, the court will dismiss Alls' habeas petition, without prejudice, as unexhausted.

Entered: October 20, 2014

Michael F. Urbanski

Michael F. Urbanski
United States District Judge